Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 03/12/01?
   b. The request was received on 03/05/02.

II. EXHIBITS

1. Requestor, Exhibit 1:
   a. TWCC-60 and Letter Requesting Dispute Resolution dated 05/17/02
   b. UB-92s
   c. EOBs
   d. Reimbursement data
   e. Medical Records
   f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

2. Respondent, Exhibit 2:
   a. TWCC-60 and Response to a Request for Dispute Resolution dated 05/31/02
   b. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

3. Per Rule 133.307(g)(3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 05/21/02. Per Rule 133.307(g)(4), the carrier representative signed for the copy on 05/22/02. The response from the insurance carrier was received in the Division on 06/04/02. Based on 133.307(i) the insurance carrier's response is timely.

4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file

III. PARTIES' POSITIONS

1. Requestor: letter dated 05/17/02
   "The Carrier failed to provide an adequate response to the request for reconsideration. Based upon the initial denial presented by the Carrier, it is the requestor's position that the carrier is required to pay the entire amount in dispute. (Provider) charges the above-referenced services at a fair and reasonable rate. Specifically, these rates are based upon a comparison of charges to other Carriers and the amount of reimbursement received for these same or similar services."

2. Respondent: letter dated 05/31/02
   "Initially, Provider asserts that Carrier did not use the proper denial codes, and consequently, has waived its defenses against Provider's request for reimbursement. Neither Rule 133.304(c) nor any other provision, however, provides that Carrier waives its defenses if the wrong *code* is used."

IV. FINDINGS

1. Based on Commission Rule 133.307(d)(1&2), the only date of service eligible for review is 03/12/01.

2. The provider billed a total of $6,658.86 on the date of service in dispute.

3. The carrier reimbursed a total of $1,061.23 and the EOB has the denials "D - Duplicate Charge" and "F – Reduction According to Fee Guidelines."

4. The amount in dispute per the TWCC-60 is $5,542.63. The difference between the total amount billed and the total amount reimbursed is $5,597.63.

V. RATIONALE

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401(a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate…"

Section 413.011(d) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Commission Rule 133.304(i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. The carrier's EOBs do not contain denial codes that would seem appropriate for this dispute. However, under the Act, there must be specific statutory authorization to create liability through waiver. Regardless of the carrier's response or lack thereof, methodology, or denial codes the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable and conforms to the criteria identified in Sec. 413.011(d) of the Texas Labor Code.

The provider has submitted EOBs from this carrier's audit company to document what they consider inconsistent application of it's own methodology, EOBs from other carriers showing a higher percentage of the billed amount reimbursed, and a reimbursement log of other EOBs. This list of EOBs shows the date of service, the amount billed and reimbursed, percentage of the billed amount reimbursed, and the payer of the bill. The reimbursement rate as a percentage of the billed amount that is shown on this log ranges from a high of 100% to a low of less that 1%. The provider in complying with Commission Rule 133.307(g)(3)(D) has submitted EOBs or documentation that is based on EOBs. However, analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight is given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. Therefore, based on the documentation available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 25th day of July 2002.

Larry Beckham
Medical Dispute Resolution Officer
Medical Review Division